STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID'S 2022 ANNUAL ENERGY EFFICIENCY AND CONSERVATION PROCUREMENT PROGRAM PLAN	:	DOCKET NO. 5189

REPORT AND ORDER

On October 1, 2021, The Narragansett Electric Company d/b/a National Grid (National Grid or Company) filed with the Public Utilities Commission (PUC or Commission) its 2022 Annual Energy Efficiency and Conservation Procurement Program Plan (2022 Annual Plan).[1] The 2022 Annual Plan was not endorsed by the Division of Public Utilities and Carriers (Division), the Office of Energy Resources (OER), or the Energy Efficiency and Resources Management Council (EERMC).[2]

National Grid submitted the 2022 Annual Plan pursuant to the System Reliability and Least Cost Procurement (LCP) statute, R.I. Gen. Laws § 39-1-27.7, and the Least Cost Procurement Standards (LCP Standards), as approved by the PUC on July 23, 2020 in Docket No. 5115.[3] R.I.

[1] National Grid's 2022 Annual Plan; https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-NGrid-Energy-Efficiency-Plan-2022-%28PUC-10-1-21%29.pdf . All filings in this docket are available at the PUC offices, located at 89 Jefferson Boulevard, Warwick R.I. or at http://www.ripuc.ri.gov/eventsactions/docket/5076page.html.

[2] OER and EERMC also filed notices of participation as an interested party in the above-captioned proceeding pursuant to RIGL §39-1-27.9. Acadia Center filed a Motion to Intervene in the proceeding, which was granted by the PUC.

[3] *See* PUC Order No. 23890 (August 25, 2020) in Docket 5115; http://www.ripuc.ri.gov/eventsactions/docket/5015-LCPStandards-Ord23890 (8-25-20).pdf. The System Reliability and Least Cost Procurement statute (R.I. Gen. Laws § 39-1-27.7) encourages the investment in cost-effective energy efficiency. Subsection (d)(5) of the statute provides the responsibility to review the filed plan and approve those measures the Commission finds are cost-effective and lower than the cost of acquiring additional supply. The statute also provides a role for the EERMC to review the energy efficiency plans before they are filed with Commission. The EERMC reviewed and did not endorse he approved the Combined Plan, *See* Energy Efficiency and Resource Management Council Vote on National Grid's 2022 Energy Efficiency Plan (filed Oct. 15, 2021); https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/EERMC-2022-EE-Plan-Vote--Summary-of-Reasons--10.15.2021.pdf.

Gen. Laws § 39-1-27.7 requires the Company to meet the "electrical and natural gas energy needs in Rhode Island in a manner that is optimally cost effective, reliable, prudent, and environmentally responsible." Section 1.3.A of the LCP Standards states that: "Least-Cost Procurement shall be cost-effective, reliable, prudent, and environmentally responsible. Least-Cost Procurement that is Energy Efficiency and Conservation Procurement shall also be lower than the cost of additional energy supply."

The primary goal of the 2022 Annual Plan is to create energy and economic cost savings for Rhode Island consumers through electric and natural gas energy efficiency, as required by the LCP Statute. Consistent with the Standards, the framework for the program consists of three-year planning periods and savings goals, followed by the development and implementation of annual plans, with the focus on achieving cost-effective energy efficiency. The 2022 Annual Plan covers the second year of the 2021-23 Three-Year Plan.[4]

For the reasons stated in this Order, the Commission approves the 2022 Annual Plan, with certain modifications set forth herein.

I. National Grid's Proposed Energy Efficiency Program Plan for 2022

A. Overview of Costs, Benefits and Savings

The 2022 Annual Plan contained proposed savings goals, budgets, funding plans, and a proposed performance incentive mechanism earning opportunity. The 2022 Annual Plan contained a projected budget for the electric programs of approximately $122.6 million.[5] National

The EERMC also filed a Cost Effectiveness Report, finding that, in its view, the Annual Plan was cost effective according to the Rhode Island Test (RI Test) and the Total Resource Cost Test, and projecting the cost to be less than the acquisition of additional supply. *See* Cost-Effectiveness Report: National Grid's 2022 Energy Efficiency Plan (Cost Effectiveness Report); https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/C-Team-Cost-Effectiveness-Report-2022-EEP---10.15.2021.pdf.

[4] The PUC approved the 2021-23 Three Year Plan in Docket No. 5076. *See* Order No. 24225 (issued September 21, 2021) https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5076-NGrid-Ord24225-%289-21-2021%29.pdf.

[5] 2022 Annual Plan at 414, Table E-2.

Grid proposed an Energy Efficiency Program (EEP) charge of $0.01425 per kWh for all customers for effect January 1, 2022.[6] This proposed electric SBC charge is an increase of approximately 28 percent over the 2021 charge.

National Grid originally proposed a Combined Heat and Power (CHP) incentive of $9,154,400 for a customer that is pursuing an energy efficiency incentive for a 13.3 megawatt CHP system that would provide electricity, hot water, and CO2 to its facility. However, the Company stated that it was still evaluating whether to seek PUC approval of the CHP incentive.[7] The Company notified the Division of the potential incentive per the standard CHP notification and approval process first approved with the 2021 Annual Plan. On September 24, 2021, the Division informed National Grid that it did not support the CHP project as proposed.[8] Given the fact that a separate approval proceeding would be necessary before any incentive could be granted for the CHP project, the Commission directed National Grid to file a provisional plan and budget reallocating the CHP incentive to other parts of the program.[9] On October 8, 2021, National Grid filed a Provisional plan (Tables E-1 through E-10) reallocating the CHP funding.[10]

The proposed 2022 Annual Plan contained a proposed budget for the gas programs of approximately $36.7 million.[11] National Grid proposed an Energy Efficiency Program (EEP) charge of $1.221 per dekatherm for residential gas customers and $0.836 per dekatherm for commercial and industrial gas customers for effect January 1, 2022.[12] These proposed charges are an increase of approximately 40 percent over the 2021 charges.

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[6] *Id.* at 413, Table E-1.
[7] *Id. at 29.*
[8] *Id*. at 29.
[9] This directive was without prejudice to the Company filing for approval in accordance with the program guidelines.
[10] Throughout the proceedings, the plan which included the reallocated spending was referred to as the Provisional Plan. National Grid ultimately withdrew the Provisional Plan on January 8, 2022. *See* discussion *supra*.
[11] *Id.* at 430, table G-2.
[12] *Id.* at 429, Table G-1.

Thus, the proposed combined electric and gas budgets, with the reallocated CHP funding, equated to approximately $159.3 million which represented an increase of $7.5 million over the approved combined budgets from 2021.[13]

National Grid estimated that the 2022 Annual Plan would generate $358.7 million in total benefits over the life of the installed electric, demand response, and natural gas energy efficiency measures.[14] The electric-funded portion of the 2022 Annual Plan would create electric of 1,145,371 net lifetime MWhs, 127,561 net annual MWhs, and 17,359 net annual kW from passive energy efficiency.[15] In addition, the 2022 Annual Plan would generate savings of 39,765 net annual kW from active demand reduction measures.[16] The natural gas portion of the plan would save 4,059,902 lifetime MMBtu over the lifetime of installed natural gas measures and 389,430 annual MMBtu.[17] Of the total $751.5 million benefits, $606.5 million stems from the electric portfolio and $145 million is derived from the natural gas portfolio.[18] For all fuels (electric, gas, oil, propane) combined the proposals would save 6,545,548 net lifetime MMBtu and 726,108 net annual MMBtu.[19]

The Company also represented that the 2022 Annual Plan was cost-effective, with a cost that is lower than the cost of energy supply for both electricity and natural gas portfolios.[20] National Grid stated that the energy efficiency portfolio will create $1.64 in lifetime benefits for

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[13] The EE Plan proposes budget increases of $5.83 million for electric and $1.75 million for gas, both of which represent 5 percent increases over 2021.
[14] *Id.* at 11.
[15] *Id.* at 49.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.* at 50 and Attachment 5, Table E-5-Primary and G-5-Primary. The Standards require National Grid to assess the cost-effectiveness of measures, programs, and portfolios according to the RI Test that was approved by the Commission in Docket 4600. The RI Test is intended to capture all benefits and costs of interest in Rhode Island energy policy and will allow a fair comparison of diverse resources in Rhode Island. A detailed summary of the benefits and costs included in the RI Test is included in Attachment 4 of the 2022 Annual Plan/

every $1.00 invested in the Plan's electric portfolio and $2.74 in lifetime benefits for every $1.00 invested in the natural gas portfolio.[21] Overall, National Grid represented that the Annual Plan would generate lifetime benefits of more than $358.7 million, with $234.6 million in benefits coming from electric and delivered fuels efficiency, passive demand response, and active demand response, and $124 million in benefits coming from natural gas efficiency.[22] The Company further asserted that the investments made to achieve these savings would add $358.9 million to Rhode Island's state gross domestic product.[23]

National Grid represented that the 2022 Annual Plan satisfied the statutory requirement that the cost of procuring energy efficiency be less expensive than the cost of acquiring additional energy supply. National Grid calculated the cost of procuring the lifetime savings for the electric efficiency portfolio at $62.1 million less than if the electric load was met by purchasing additional electric supply, and $18.9 million less than if the natural gas load was met by purchasing additional natural gas supply.[24]

B. National Grid's Proposals

The 2022 Annual Plan identified the energy savings goals for 2022 and described the detailed strategies, programming, and investments the Company proposed to undertake to achieve these goals, in pursuit of the overarching goals, savings, and benefits outlined in the 2021 -2023 Three-Year Energy Efficiency Plan. An overview of these programs was included in Tables E-2 and G-2 of the filing and the specific programs were set forth in detail within the proposal.[25] The

[21] *Id.* at 13 and Attachment 5, Table E-5-Primary and G-5-Primary. A detailed summary of the benefits and costs included in the Rhode Island Test are included in Attachment 4 of the 2022 Annual Plan. These benefits will flow to all Rhode Islanders. Tables E-5 and G-5 compare the RI Test results without economic benefits and with economic benefits included using the multipliers as applied in the past two annual plans.
[22] *Id.* at 48. Total benefits do not include quantified economic benefits.
[23] *Id*. at 48-49.
[24] *Id*. at 54.
[25] The non-income eligible residential programs are: (1) Residential New Construction; (2) Energy Star® HVAC; (3) EnergyWise; (4) EnergyWise Multi-Family; (5) Energy Star® Lighting; (6) Residential Consumer Products; (7)

Commission will not re-state all the programs here which have undergone extensive review in prior years. The Commission emphasizes that the absence of any substantial discussion in this Order regarding many of the programs in the filing should not be construed as meaning that they were not evaluated by the Commission. It is simply a matter of necessity that the Order would focus on those matters where the Commission found modifications to be needed. Nor should it be construed that the Commission has reviewed and approved every program, measure or strategy contained in the filing. The Commission's review – while thorough and extensive – is constrained by the size of the filing and the limited time that the Commission has to review it.

The main focus of the remainder of this written Order is to address a limited number of matters which were reviewed in detail by the Commission in the course of the proceedings this year. These include budget issues, the performance incentive mechanism, and the budget allocation for the EERMC. Immediately below is a summary of the information that was included in National Grid's filing.

i. Program Budget

As described above, National Grid's originally filed plan and budget included a $9.2 million dollar CHP incentive component to the electric budget. At the Commission's request, the Company also filed a Provisional Plan which reallocated the $9.2 million dollars to other C&I New Construction programs.[26] The Commission also requested that the Company file a plan with

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Home Energy Reports; (8) Residential ConnectedSolutions; (9) Energy Efficiency Education Programs; (10) Residential Pilots; (11) Community Based Initiatives – Residential; and (12) Comprehensive Marketing – Residential. The income eligible residential programs are: (1) Single Family – Income Eligible Services; and (2) Income Eligible MultiFamily. The commercial and industrial programs are: (1) Large Commercial New Construction; (2) Large Commercial Retrofit; (3) Small Business Direct Install; (4) Commercial ConnectedSollutions; (5) Commercial Pilots; and (5) Community Based Initiatives – C&I. *See* 2020 Efficiency Plan at Tables E-2 and G-2 and Attach. 1 and 2.

Attachment 1 of the Annual Plan provides detailed descriptions of the residential energy efficiency and active demand programs, including detail on the market (customer/building types) targeted, eligibility requirements, offers, the implementation and delivery design, and new items for 2022.

[26] *See* National Grid – Provisional Plan 1, refiled on November 5, 2021 (Tables 5-1 through E-10). As will be discussed supra, National Grid filed a corrective Provisional Plan on January 7, 2022, and subsequently withdrew

the CHP component removed and not reallocated (referred to as the "Alternative Base Plan").[27] The gas program and budget remained the same in all plans.

The program implementation costs were $9,163,400 higher in the Provisional Plan compared to the Alternative Base Plan. This higher cost would be funded entirely by ratepayers.[28] Moreover, the total net benefits and net benefits that are eligible for the performance incentive mechanism were lower under the more expensive Provisional Plan.[29]

ii. Performance Incentive Mechanism

National Grid proposed to continue the structure of the performance incentive mechanism that was approved by the PUC in Docket No. 5076.[30] The Company sought electric performance incentives of $5.5 million (all through the Commercial & Industrial (C&I) sector) and natural gas performance incentives of $1.7 million (also all through the C&I sector).[31] These design performance payouts are the same levels set by the Commission in 2021, except the Company proposed to move $100,000, which was allocated to the gas Non-Income Eligible Residential sector in 2021, to the gas C&I sector.

iii. EERMC Budget

Rhode Island General Laws § 39-2-1.2 sets forth the provisions for both the EERMC and OER to receive ratepayer funding for certain stipulated activities. National Grid proposed allocating approximately $1.8 to the EERMC.[32]

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the Provisional plan on January10, 2022. See National Grid - Corrected Provision Plan - entitled "Total Resource Cost Update for Provisional Plan" and attachments to document which include Refiled Tables E-1 – E-10 for the Provisional Plan; PUC 1-20 Refiled; and PUC 3-1 Corrected (Refiled) (filed 1/7/22).

[27] *See* National Grid's Response to PUC 2-17.

[28] In addition, participants (National Grid customers that participate in the Energy Efficiency Program) would pay an additional $3 million under the Provisional Plan. *See* PUC Exhibit 1.

[29] Total net benefits are $89,200 less and PIM eligible net benefits are $835,380 less under the Provisional Plan. See PUC Exhibit 1.

[30] *Id.* at 30.

[31] *Id.* at 426, 441; Tables E-8C and G-8C.

[32] *See Id.* at 413, 430; Tables E-2 and G-2. National Grid proposed an allocation of ratepayer dollars to OER of approximately $2.64 million – an amount equal to the full statutory cap.

iv. Forward Capacity Market

ISO-NE administers and operates wholesale energy markets across its New England territory. One of those is the Forward Capacity Market (FCM) which ensures long-term reliability of the electric grid. To do this, ISO-NE administers annual Forward Capacity Auctions three years in advance of a 12-month Capacity Commitment Period.[33] Energy efficiency is eligible to participate in the FCM as an on-peak passive demand resource and National Grid is able to offer energy efficiency capacity into the FCM and earn payments for capacity supply obligations similar to any other generating resource.[34] These payments benefit ratepayers by reducing the amount of funding collected through the SBC.

ISO-NE utilizes Financial Assurance as a financial mechanism to ensure that resources are constructed, commissioned, and operational before their capacity obligation date. National Grid reported that it will be unable to fulfill some of its capacity supply obligations and expected to incur a Financial Assurance penalty of approximately $250,230 on behalf of its energy efficiency resource in the FCM.[35] National Grid seeks to recover the cost of this Financial Assurance penalty from ratepayers.[36]

v. Gas Overspend

National Grid reported that it projected to exceed the approved gas portfolio implementation budget for 2021. The approved 2021 implementation budget for the gas portfolio was $33,275,200; the Company's projected actual spend is $37,722,432.[37] National Grid proposed

[33] The purpose of the auction is for ISO-NE to ensure that it has procured sufficient capacity to satisfy reliability needs at the least-cost resource mix among the available capacity resources in New England.
[34] To date, National Grid has earned over $110 million dollars in revenue which has gone back to Rhode Island customers by offsetting the energy efficiency systems benefit charge. *Id.* at 33.
[35] *Id.* at 33. National Grid also reported that it expects ratepayers to receive $14.3 million in FCM revenue during 2022. *See Id*. at 413, Table E-1.
[36] *Id*. at 35-6.
[37] *Id.* at 36.

to recover the overspend in 2022. National Grid asserted that the projected overspend was the result of unprecedented demand in weatherization services and the Company's decision to continue to serve gas customers within the EnergyWise SingleFamily program. The Company reported that in June of 2021 it recognized the projected overspending and suspended active marketing and reduced incentives.[38]

National Grid estimated that the overspending would result in a downward adjustment of $386,750 in its 2021 performance incentive due to a service quality adjustment.[39] This is the maximum service quality adjustment for the gas market rate residential sector.

vi. Evaluation, Measurement, and Verification Budget

Consistent with prior years, the Company proposed to hire independent third-party consulting firms to regularly conduct evaluation studies as part of its evaluation, measurement, and verification (EM&V) process in order to verify the impacts of programs on energy savings. EM&V provides independent verification of impacts to ensure that savings and benefits claimed by the Company through its energy efficiency programs are accurate and credible. EM&V also provides insight into market characteristics and guidance on energy efficiency program design to improve the delivery of cost-effective programs.[40] The EERMC and OER provide direct oversight of each evaluation study conducted.[41] Every year, the results of the studies are used to update the benefit-cost calculations during planning. The EM&V process also supports the Company's participation in the ISO-NE Forward Capacity Market by providing the necessary verification of claimed savings in order to meet the high standards for participation in market.[42]

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[38] *Id.* at 37-38.
[39] *Id.* at 39.
[40] *Id.* at 301.
[41] *Id.* at 54.
[42] *Id.* at 107.

National Grid provided a list and description of planned evaluation studies for 2022 and estimated a total budget of approximately $3.1 million ($2.36 million for electric and $0.763 million for gas), excluding internal staffing costs.[43]

vii. Rhode Island Infrastructure Bank/Efficient Buildings Fund

Recent revisions to the LCP statute require that the "commission shall allocate, from demand-side management gas and electric funds authorized pursuant to this section, five million dollars ($5,000,000) of such funds on an annual basis to the Rhode Island Infrastructure bank (RIBB)."[44] National Grid proposed to allocate the $5 million funding solely to the electric budget.[45]

II. Other Parties Positions

The Division and EERMC filed pre-filed testimony and their positions are summarized below. OER and Acadia Center were both parties to this docket but did not file any supporting testimony.

A. Division of Public Utilities and Carriers' Position

The Division reviewed the 2022 Annual Plan and the Provisional Plan and submitted the joint testimony of Joel Munoz and Jennifer Kallay.[46] The Division did not support the original plan due to its inclusion of the CHP proposal. However, it recommended that the Commission approve the Provisional Plan but had several reservations.[47] Notably, the Division expressed concerns regarding the increasing energy efficiency budgets and the upward cost trajectory of other

[43] *Id.* at 304-306.
[44] *See* R.I. Pub. Laws Ch. 224 (2021): http://webserver.rilin.state.ri.us/PublicLaws/law21/law21224.htm.
[45] 2022 Annual Plan at 414, Table E-2.
[46] A copy of their joint testimony (Munoz/Kalley Jt. Testimony) is available at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-DIV-Munoz-Kallay-Testimony-%2811-17-21%29.pdf . Mr. Munoz is a Rate Analyst and Ms. Kallay is employed by Synapse Energy Economic Inc. (Synapse) as a Senior Associate.
[47] *See* Munoz/Kalley Jt. Testimony at 5, 21.

electric and gas programs that collectively continue to increase the already high cost of energy for ratepayers.[48]

The Division also submitted the joint testimony of Tim Woolf and Ben Havumaki on macroeconomic impacts and their role in assessing cost-effectiveness.[49] The Division asserted that, when applying the Rhode Island Test, monetary values of macroeconomic impacts should not be added to the monetary values in the Company's benefits cost analysis (BCA) to avoid double-counting of these impacts.[50] Instead, in order to present these impacts in the most transparent and accurate way, the Division recommended that, any time the Rhode Island test is used to assess utility programs and investments, the Commission direct National Grid to not add the monetary values of macroeconomic impacts to the monetary values of the BCA but instead present the macroeconomic impacts separately and alongside the BCA results. The Division also recommended that the Commission direct National Grid to present the full amount of macroeconomic benefits for the energy efficiency portfolio as a whole, not the "net incremental" amount as estimated by the Company, and to report other metrics for macroeconomic impacts, including jobs, GDP, state income taxes, business income, and personal income.[51]

B. Rhode Island Energy Efficiency and Resource Management Council's Position

The EERMC submitted the testimony of Samuel Ross, Senior Consultant at Optimal Energy, the prime contractor for the EERMC's Consultant Team.[52] Mr. Ross noted that the EERMC voted

[48] *Id*. at 9.
[49] A copy of their joint testimony (Woolf/Havumaki Jt. Testimony) is available at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-DIV-Woolf-Havumaki-Testimony-%2811-17-21%29.pdf . Mr. Woolf is employed by Synapse as a Senior Vice President and Mr. Havumaki is employed by Synapse (Synapse) as a Senior Associate
[50] *Id.* at 4-5.
[51] *Id*. at 6.
[52] A copy of his testimony is available at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-EERMC-Ross-Testimony--11.17.2021.pdf .

initially not to endorse the 2022 Annual Plan, and after reviewing discovery and the Provisional Plan, the EERMC's central concerns related to the Plan had not been resolved. In particular, the EERMC was concerned that all opportunities to achieve cost-effective savings as identified in the Targets and the High Scenario for 2022 in the Three-Year Plan were not given due consideration, and the EEMC still had significant concerns related to the Income-Eligible and Multifamily programs and National Grid's commitments related to equity in energy efficiency.[53] However, Mr. Ross stated that the EERMC supported the removal of the CHP component from the plan.[54]

III. Discovery, Hearing and Findings

The Commission conducted a comprehensive and in-depth review of the 2022 Annual Plan. In conducting this review, the Commission issued 252 pre-hearing data requests and 14 record requests to National Grid, convened 5 days of hearings, and conducted three open meetings.[55] At Open Meetings on January 25 and 28, 2022, the PUC considered the evidence and ruled on the proposal. The Commission approved the 2022 Annual Plan with a limited number of modifications which are discussed below. The Commission deferred decision on portions of the plan until it had the opportunity to conduct further discovery and proceedings.[56]

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[53] *Id.* at 3.
[54] *Id.* at 4.
[55] The Commission also served data requests to the Division, OER, and the EERMC. In addition, National Grid responded to data requests from the Division, EERMC, OER, and Acadia Center. *See* docket at http://www.ripuc.ri.gov/eventsactions/docket/5189page.html. The following witnesses testified for National Grid: Pamela Viapiano, Christopher Porter, John Tortorella, John Richards, Angela Li, Amy Vavak, Laura Rodormer, and Ben Rivers.
[56] As discussed below, the Commission deferred consideration and decision on the Forward Capacity Market issue and the gas overspend. At hearing on December 8, 2021, the Commission separated the FCM matter from this docket and gave that matter its own docket number. *See* Docket No. 5208 located at http://www.ripuc.ri.gov/eventsactions/docket/5208page.html.

Again, the main focus of the remainder of this written Order is to address a limited number of matters which were reviewed in detail by the Commission in the course of the proceedings this year.[57]

A. **Program Budgets and Cost Effectiveness**

The Commission conducted extensive discovery on National Grid relating to the comparison of the Provisional Plan and Alternative Base Plan budgets and the benefits associated with each budget. The majority of the hearings on December 8 and 10, 2021 were focused on further understanding the costs and benefits of each budget. This Order will only briefly discuss this comparison as National Grid ultimately withdrew the Provisional Plan, as discussed below.

The planned program total costs were $12,170,900 higher in the Provisional Plan ($135,928,000) compared to the Alternative Base Plan ($123,757,100). The Provisional Plan also required an additional $3 million in participant contribution. However, despite the higher budget and participant costs, the Provisional Plan had $89,200 less total net benefits and $835,380 less PIM eligible net benefits than the Alternative Base Plan.[58]

On Friday afternoon, January 7, 2022 -- only three days before the final evidentiary hearings -- National Grid filed what it called "Corrections to the Provisional Plan."[59] National Grid explained that the EERMC's consultants had pointed out an unintended impact of a Total

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[57] In addition to the matters discussed below, the Company clarified a section of the 2022 Annual Plan that proposed certain guidelines for budget transfers between programs or sectors. One of the Company's proposals stated that the Company would not be permitted to adjust its goals or incentive target calculations as a result of any transfers between sector budgets. *See* 2022 Annual Plan at 122. At hearing, the Company witnesses clarified that the proposed language was inadvertently included in the 2022 Annual Plan and that the intent of the Company was that there would be no adjustments made to maintain the "parity" between the spending and savings targets. Hr'g. Tr. at 72-77 (Dec. 8, 2021). The Company provided a written response clearly stating that it would not be permitted to adjust its goals or incentive target calculations as a result of any transfers between sector budgets. *See* National Grid Response to RR-4.

[58] *See* PUC Exhibit 1.

[59] National Grid filed the corrections just before 4:00 pm on Friday, January 7, 2022. The hearings were scheduled to resume on Monday, January 10, 2022. A copy of the document is located at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-NGrid-Corrections-to-Provisional-Plan-%28PUC-1-7-22%29.pdf.

Resource Cost (TRC) modeling convention on planned increases to total TRC values, and therefore to customer contributions, resulting from the Company's re-allocation of the $9.1 million included in the Provisional Plan. National Grid stated that it agreed with the EERMC's consultants and that because of this "error," customer contributions for the incremental measures was higher than it would have been if the Total Resource Cost had been held constant.[60] This, in the Company's view, led to an overstatement of likely Total Resource Costs for the entire volume of impacted measures.[61]

On Sunday, January 9, 2022, the Division filed a *Motion to Strike, or in the Alternative, Motion to Exclude from Consideration* (Motion to Strike) the Corrections to the Provisional Plan.[62] The Division asserted that the Company's filing was prejudicially untimely – having been filed three months after the proceedings began and on the eve of the final three days of hearings in this matter. The Division asserted that Division staff and its experts had already concluded preparations for the continuation of the contested hearings and were unable to understand portions of the filing. Moreover, the Division asserted that National Grid was aware of the EERMC's consultants' concerns for nearly a month prior to filing the corrections.[63]

On January 10, 2022, National Grid informed the Commission that it was withdrawing the Provisional Plan and supporting the Alternative Base Plan.[64] The Commission than questioned each of the other parties as to whether any party was going to press for a final electric budget that was higher than the Alternative Base Plan. The Division, EERMC, and OER all stated that they

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[60] *Id.* at 1.
[61] *Id.*
[62] A copy of the Division's Motion is located at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-DIV-MotionStrike-Memo-Munoz-Affidavit-%281-7-2022%29.pdf
[63] *Id.* at 2-3.
[64] Hr'g. Tr. at 12 (Jan. 10, 2022).

would not be pressing for a higher budget; Acadia Center indicated that it was supporting an electric budget higher than the Alternative Base Plan.[65]

Findings

The Commission approved the budget based on the Alternative Base Plan – which was the only plan pending after the Company withdrew the Provisional Plan – subject to modifications discussed in this Order below. The Commission ordered the Company to file a compliance filing by January 27, 2022 for review and approval.

B. **Performance Incentive Mechanism**

National Grid's proposal did not make any changes to the PIM structure that was approved by the Commission in Docket No. 5076 and the Company proposed keeping the design performance payout at $5.5 million for electric and $1.7 million for gas the same as in the approved 2021 Annual Plan.[66] However, since the expected PIM eligible net benefits in the 2022 Annual Plan are significantly less than the PIM eligible net benefits from the 2021 Annual Plan, National Grid proposed increasing the design payout rate.[67] More specifically, the PIM eligible net benefits dropped from $89.5 million in 2021 to $32.6 million in 2022 for the electric C&I program (Alternative Base Plan) and from $9.3 million to $8.8 million for the gas C&I program.[68] Thus, maintaining the same design payout rate in 2022 as approved in 2021 would result in a significantly lower design performance payout - approximately $1.9 million for electric and $1.5 million for

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[65] Hr'g. Tr. at 17-19 (Jan. 10, 2022). The Commission granted the Division's *Motion to Strike* subject to marking the Corrections to the Provisional Plan for identification only. *Id.* at 21-22.
[66] 2022 Annual Plan at 30.
[67] The design performance payout is equal to the PIM eligible net benefits multiplied by the design payout rate.
[68] See Order No. 24255 in Docket No. 5076, National Grid Response to PUC 7-9, and 2022 Annual Plan at Schedule G-8C.

gas for the Provisional Plan and approximately $2.0 million for electric and $1.5 million for gas for the Alternative Base Plan.[69]

The Commission requested that the Division, EERMC, OER, and the Company provide their opinion as to whether the implementation of the 2022 Annual Plan would be impacted if the design payout rates were the same as in 2021 and, if so, to make a recommendation of the design payout rates and total design level potential incentive and maximum potential incentive. Both OER and EERMC opined that the specific dollar value of a performance incentive opportunity should not impact the implementation of a portfolio of programs that have already been designed and submitted for approval, since if approved, National Grid would be obligated to implement that plan.[70] The Division initially opined that it was not aware of any reason to modify the amounts from the 2021 Annual Plan and recommended that the Commission maintain the same total design level potential incentive and maximum potential incentive.[71]

National Grid opined that a significant reduction in performance incentive earning opportunities would likely reduce the levels of Company focus, management attention and resource allocation committed to achieving specific desired programmatic outcomes, all of which could be expected to have a negative impact on program implementation activities.[72] More specifically, the Company asserted that a dramatic decrease in the Company's electric program earning opportunity would be interpreted as a signal from the Commission around the value that the Commission perceives from these programs, and, accordingly, the level of focus, prioritization and management attention that should be devoted to their successful execution.[73] Therefore, the

[69] National Grid Response to PUC 2-18.
[70] *See* EERMC Response to PUC 1-4; OER Response to PUC 1-4. OER simply concurred in EERMC's response and reasoning.
[71] Division Response to PUC 1-4.
[72] National Grid Response to PUC 3-4.
[73] *Id.*

Company believed that the proposed design performance payout opportunities of $5.5 million for electric programs and $1.7 million for gas programs, with opportunities to earn up to 125% of each of these amounts for exemplary performance, represented appropriate earning opportunities that sufficiently incentivize desired Company actions and outcomes.[74]

At hearing on December 8, 2021, the Commission questioned National Grid's witnesses regarding the PIM. Pamela Viapiano, Vice President of New England Regulation, and Chris Porter, director of customer energy management for New England at National Grid, testified for the Company.

The Commission questioned both witnesses about whether the Company's energy efficiency incentive for 2022 should be subject to the earnings sharing mechanism if the Company earns above its allowed rate of return in 2022.[75] Mr. Porter testified that the Company would prefer that the energy efficiency incentive not be factored into the Company's earning sharing mechanism, reasoning that there were two core reasons that the PIM mechanism has been effective in driving company behavior and the pursuit of benefits for customers. First, the incentive has been sufficiently large to motivate desired actions and outcomes and, second, there has been a high degree of certainty around the relationship between efforts and outcomes and the earnings that would then result from those outcomes. The Company believed that changing that relationship would introduce uncertainty into the earning opportunity associated with the energy efficiency programs and would reduce the perceived attractiveness of the energy efficiency business to the Company.[76]

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[74] *Id.*

[75] Under the Company's earnings sharing mechanism applicable in 2020, the Company must share 50% of its over-earnings with ratepayers when the over-earnings are greater than the allowed return by up to 100 basis points; then share 75% of that portion of over-earnings with ratepayers that are greater than 100 basis points.

[76] Hr'g. Tr. at 16-17 (Dec.8, 2021).

Ms. Viapiano testified that performance incentives are most effective when there is clarity on both metrics and incentives and consistent signals for the company. Inclusion of the energy efficiency PIM, or potentially other PIMs, in the earnings sharing mechanism would mute the incentive for strong program performance by introducing uncertainty around the degree that the incentive can be earned or motivate the company to consider tradeoffs between financial incentive rewards versus performance benefits for customers.[77]

The Commission further questioned Ms. Viapiano and Mr. Porter about the amount of the design performance payout and its relationship to basis points on the return on equity on the Company's rate base. Ms. Viapiano acknowledged that a 100-basis point earnings-enhancement opportunity is "substantial," and recommended that if the Commission believes that 100 basis points is too high, then the Commission should adjust it downward, but should not include it in the earnings sharing mechanism.[78] The Commission requested that the Company provide it with a calculation of the basis point impact associated with the performance incentives that the Company had proposed and earned for years 2010 through the 2022.

In response, the Company produced charts showing the target and earned incentive for each year represented in terms of basis points.[79] For the electric program, the Company's target incentive ranged from a low of 50 basis points in 2010 to a high of 146.8 basis points in 2014 and averaged 107.5 basis points over the period. Similarly, for the gas program, the Company's target incentive ranged from a low of 13.7 basis points in 2010 to a high of 46 basis points in 2014 and averaged 34 basis points over the period.

[77] Hr'g. Tr. at 13 (Dec.8, 2021).
[78] Hr'g. Tr. at 48-50, 65 (Dec.8, 2021).
[79] National Grid Response to RR-3

The Commission also questioned the witnesses about whether the Company's PIM recommendation was consistent with the Commission's PIM's Principles. Mr. Porter initially testified that the PIM Principles should not be "used as a driver of program design," but later clarified that the Principles should be "one element of program design but not the sole element."[80] Following up on this response, the Commission questioned the Company as to whether it was utilizing the PIM to drive improvements in the program on a year-over-year basis in light of the significant decline in PIM eligible net benefits. Mr. John Tortorella explained that the factors influencing the decline included changes in some of the EM&V studies and the Company's utilization of the 2021 Avoided Energy Supply Costs in New England (AESC) study which reduced the amount of saving and the value of benefits that the Company could claim.[81] Mr. Porter acknowledged that the Company typically designs and plans programs around where there are opportunities for achievable savings and that the avoided cost values are later applied to planned savings to calculate the associated benefits.[82] Mr. Porter further described the AESC study as largely an exogenous variable in regards to planning the program.[83]

i. Open Meeting Discussion of PIM

On December 21, 2021, the Commission convened an open meeting and engaged in an extensive discussion of the PIM and the hearing and discovery undertaken by that point.[84] The Commission reviewed the information showing the target and earned incentive that the Company has earned expressed as basis points and compared those amounts to the Company's proposed incentive for 2022. Based on the information from the proposed plan and subsequent discovery

[80] Hr'g. Tr. at 61-63 (Dec.8, 2021).
[81] Hr'g. Tr. at 83-84 (Dec.8, 2021). Mr. Tortorella is employed by National Grid as a senior analyst. *Id.* at 9.
[82] Hr'g. Tr. at 99-100 (Dec.8, 2021).
[83] Hr'g. Tr. at 103-104 (Dec.8, 2021).
[84] At the Open Meeting on December 21, 2021, the Commission also suspended National Grid's rate request and voted to leave in place the current rate for the month of January 2022.

and hearings, under the Company's proposal the target incentive of $5.5 million for the electric program and $1.7 million for the gas program amounted to 117 basis points and 34 basis points for the electric and gas programs, respectively.[85]

The Commission indicated that it was struggling with establishing an incentive level that comported with Principle 4 of the Commission's *Guidance on Principles for the Development and Review of Performance Incentive Mechanisms*. Principle 4 states that an incentive should offer the utility no more than necessary to align utility performance with the public interest.[86] The Commission expressed that there had been no evidence presented in these proceedings to justify that an incentive at the levels National Grid was proposing was necessary to align utility performance with the public interest.

The Commission emphasized that the program is delivering significantly fewer benefits to ratepayers than previous years – yet the Company expected to receive a greater share of those diminished net benefits. The Commission reviewed the Company's responses to record requests which asked the Company to provide an illustration of the planned PIM eligible net benefits and the earned electric and earned gas incentive expressed in basis points for each year from 2010 through 2022.[87] The information clearly showed that the PIM eligible net benefits have significantly decreased in the last two years. For example, for the electric program, PIM eligible net benefits were over $195 million in 2019, but dropped to $79.9 million in 2019, and are expected to drop further to $21.7 million in the proposed 2022 Provisional Plan.[88] Similar decreases have

[85] The Company had informed he Commission that the total dollar value equating to 10 basis points on the return on equity on the Company's average electric and gas distribution rate base as of December 31, 2020, was $471,095 for the electric distribution business and $506,032 for the gas distribution business. See National Grid Response to PUC 4-1.
[86] *See* Guidance on Principles for the Development and Review of Performance Incentive Mechanisms in Docket No. 4943.
[87] *See* National Grid's Responses to RR-3 and RR-9.
[88] National Grid Response to RR-9.

occurred in the gas program such that for the first time since 2010 the PIM eligible net benefits are expected to be negative in 2022.[89]

Despite these decreases, the Company proposes to keep the target incentives at the same levels as 2021 - $5.5 million for electric and $1.7 million for gas. Consequently, the design payout rate, or the percentage of PIM eligible net benefits the Company proposes to retain as an incentive, increases from 6% for the electric program in 2021 to 17% for 2022. Under the Company's proposal, the ratepayers' percentage share of the already significant decrease in PIM eligible net benefits drops correspondingly. By keeping the same incentive amount, or design performance payout, and simply adjusting its percentage share of those benefits, the Company avoids any decline in its earnings potential that otherwise would result from the decrease in available net benefits that is supposed to be shared with ratepayers. Stated another way, the Company maintains the same performance incentive value regardless of the fact that net benefits to ratepayers are declining.

Given this effect, the Company's proposal conflicts with the basic purpose of the PIM. The Company inherently reflects an assumption that the purpose of the PIM is to grant the Company a certain incentive amount regardless of its long-term performance and changes in benefits obtained. This is further illustrated by the Company's proposed payout rate, which was the result of calculating a ratio that mathematically achieves a targeted financial reward that ignores the impact on ratepayers. Under the Company's methodology, the amount of achievable net benefits is rendered irrelevant because the payout rate is simply adjusted in order to arrive at the desired payout.

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[89] *Id.*

The Company's methodology appears to reflect the view that its role in administering the program is akin to a general contractor who simply runs an energy efficiency program, as opposed to implementing an economic strategy to procure the least cost electric and natural gas resources. For example, if the Company is given the same earnings potential regardless of the total net benefits to ratepayers, the Company has no incentive to plan programs that maximize net benefits in a manner that is consistent with least cost procurement. Instead, the effect of the incentive is that the Company becomes financially indifferent to the output of net benefits resulting from its program planning. In such case, avoided costs are essentially treated as exogenous to its planning process by simply using the avoided costs to calculate the value of benefits *after* planning the program. The Commission rejects this approach. Avoided costs and other economic conditions should be inputs in the planning process, where the Company looks at avoided costs and changing economic conditions in planning each annual plan and in planning the future of the program. Similarly, the Commission is concerned that the effect of the incentive would be to cause the Company to focus exclusively on the delivery of a single year plan as opposed to engaging in a long-term economic strategy to develop multi-year strategies that maximize customers net benefits over time.

The Commission indicated that, while it approved the PIM structure for three years in Docket No. 5076, it did not approve a specific dollar amount of the potential incentive for years 2 and 3 of the three-year plan. The Commission stated that, at the continued hearings in January 2022, it would be looking for National Grid and the parties to provide evidence as to why the Commission should or should not approve a different payout rate than approved last year.

ii. Divisions Recommendations for PIM

On December 31, 2021, the Division supplemented its response to the PUC's earlier questions regarding the PIM in light of the information discussed at the December 8th hearing and subsequent open meeting on December 21st. The Division provided a detailed recommendation and proposed a framework for reviewing the PIM target incentive levels.[90] As an initial matter, the Division recommended that the design performance payout for the PIM be revisited each year as many aspects of the program can change from year-to-year, requiring reconsideration of both the amount of the incentive and the allocation of incentives by customer sector. The Division also recommended that the Commission consider the concept of "capital bias" when determining the target incentive level each year as it can provide a useful benchmark for setting the target incentive.[91]

The Division proposed that the Commission consider four metrics to determine the PIM incentive each year. First, the Division recommended that the Commission continue to look at the percentage of net benefits. The Division recommended that this should be the primary metric used to set target incentives, where possible. Second, the Division recommended that the Commission evaluate the incentive in comparison to the Company's basis points in order to put the potential PIM earnings in context relative to the other Company earnings. Third, the Division recommended that the potential return on avoided capacity costs be used as a benchmark for determining the target incentives. Finally, the Division recommended that the Commission should compare the Energy Efficiency PIM target incentive level with those of other PIMs in order to place the Energy

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[90] Division Supplemental Response to PUC Set 1 at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-DIV-SuppDR-NGrid1-%2812-31-21%29.pdf. Corrected Attachment to Division Reponses to National Grid Data Request Set 1.pdf. The Division noted that it supplemented its original response after listening to the Commission discuss the PIM at open meeting on December 21, 2021.

[91] *Id.* at 1. The Division defined capital bias by explaining that all regulated utilities have a bias to invest in capital, as opposed to labor, O&M, and other pass-through costs, because they can put capital costs into rate base and earn a return on them.

Efficiency PIM in context and provides a holistic view of all the incentives being earned by the Company.[92]

Applying these metrics, the Division recommended that the Commission set the target incentive, or design performance payout, at $3.3 million for the electric program and $1 million for the gas program. These amounts represented approximately 70 basis points on the electric program and 21 basis points on the gas program. The Division reasoned that the ability to earn this many basis points for programs of this size should be sufficient to encourage the Company to plan for and implement successful energy efficiency programs.[93]

At hearing on January 2022, the Company informed the Commission that it had reviewed the Division's recommendation and supported the Division's proposed use of multiple metrics to establish the PIM, supported the Division's recommendation to reevaluate the PIM annually, and believed that the Division's recommended design performance payouts of $3.3 million for the electric program and $1 million for the gas program for 2022 was reasonable.[94]

Findings

The Commission will continue to utilize the PIM structure approved in Order No. 24225 in Docket 5076 with two modifications.

First, the Commission approved a design performance payout of $3,390,165 for the electric C&I sector and $1,000,000 million for the gas C&I sector. These are the amounts recommended by the Division and supported by National Grid. While the Commission agrees with the amount recommended by the Division, it does not adopt the Division's framework. Some of the Division's recommended metrics - eligible net benefits, basis points, and a comparison to other PIMs - are

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[92] Division Supplemental Response to PUC Set 1 at 2-3.
[93] Division Supplemental Response to PUC Set 1 at 3-5.
[94] Hr'g Tr. at 28-29 (Jan. 10, 2022).

helpful as reasonable indicators of whether the incentive to the utility is no more than necessary to achieve the desired outcome. However, applying those metrics next year could lead to an incentive amount that is unreasonable. The Commission has adopted *Guidance on Principles for the Development and Review of Performance Incentive Mechanisms* which the Commission will continue to use to evaluate performance incentives.[95] In addition, the Company and parties must understand: if ratepayers are receiving fewer net eligible benefits next year than is targeted for the 2022 program year, the Commission expects that the Company's target incentive would need to be correspondingly lower as well.

Second, the Commission modified the service quality adjustment for the gas and electric residential and income eligible sectors. Last year, in Docket No. 5076, the Commission created a service quality adjustment for these sectors in which, if National Grid failed to deliver a certain level of benefits, its incentive achieved in the respective C&I sectors would be reduced. The Commission adopted these service quality adjustments to incentivize the company to implement the program that was approved and to implement it in a cost-effective manner.

Last year, the Commission chose to set the maximum downward service quality adjustment in each sector based on the amount that the Company could have earned if it had hit a certain minimum level of performance in the Company's original 2021 Annual Plan proposal. This year, because the Commission is reducing the design performance payout to $3,390,165 for the electric C&I sector and $1,000,000 million for the gas C&I sector, the Commission believes that the corresponding maximum service quality adjustments should also be reduced. However, this year it also became apparent to the Commission that the maximum service quality adjustments needed to be increased as a percentage of the design performance payout, or total incentive, as the potential

[95] *See Guidance on Principles for the Development and Review of Performance Incentive Mechanisms*, Docket No. 4943 at http://www.ripuc.ri.gov/eventsactions/docket/4943-PIMs_Guidance_Document_Approved.pdf

for downward adjustment did not appear to have the desired impact on the Company's performance. For example, as evidenced by the record in this docket, the Company expects to incur the maximum service quality adjustment of $386,750 in the gas residential sector due to the overspending during 2021. The Company's witness testified that preliminary reports indicate that the company has spent nearly 200% of its gas residential budget and at least 137% of its electric residential budget. Even at these preliminary numbers, the company had already maxed out its service quality adjustment due to overspending the approved budget. The service quality adjustment didn't send a strong enough signal to the Company to focus on cost control. Therefore, in order to strengthen the cost-control element of the service quality adjustment for the non-income eligible residential gas and electric sectors, the Commission will reduce the service quality adjustment for those sectors by a smaller percentage or 25% from last year's amounts. For the income eligible residential gas and electric sectors, however, the Commission will reduce the service quality adjustment in the same proportion as this year's design performance payout reduction, or 38% from last year's amounts.

Finally, the Commission emphasizes that the purpose of the performance incentive is not just to incent the Company to deliver the energy efficiency program that the Commission approved, but also to exert force on the Company to deliver the best economic investment for ratepayers. This is the difference between running an energy efficiency program and implementing an economic strategy of least cost procurement. In doing the latter, the Company makes more money when ratepayers make more money.[96]

[96] Most of the value that ratepayers receive are in the form of bill savings. These bills savings are based on estimated values and ratepayers take a not insignificant risk that some of that value won't show up as cash savings on a utility bill. Throughout this proceeding, the Commission considered how avoided costs are realized by Rhode Island ratepayers. There is a good degree of uncertainty in the value streams associated with avoided costs from energy and demand savings, and more uncertainty in how avoided costs are realized by retail customers. The Commission notices that cost allocations are likely not being accurately reflected at the wholesale or retail level.

Finally, there was a fair amount of discussion in this docket about increasing equity in the program. Several witnesses commented that the way to increase equity in the energy efficiency program is to increase participation in the program. Energy efficiency, like renewable energy and other distributed energy resource programs, create opportunities for customers to become energy suppliers and benefit from providing energy supply to the utility. However, the customers who stand to gain the most from these programs are those who own property and can invest in it. Inequitable outcomes from energy efficiency and distributed energy resource programs stem from decades of policies that prevented people from owning property and building wealth. The purpose of the PIM is to improve equity for all customers - participants and non-participants - by focusing the company on minimizing the cost of the power system through investments that are lower than the cost of supply. The Commission seeks to improve equity by ensuring that all customers, regardless of their ability to participate or own property, can be reasonably confident that they are receiving something of value from the programs and not simply paying higher electric and gas rates from rising program budgets that do not provide net benefits to all ratepayers.

C. **EERMC Budget**

Another cost issue the Commission needs to address in order to determine the final program budget for the National Grid 2022 Plan relates to the allocation of funds to support the activities of the OER and EERMC. OER is an agency of the state within the Department of Administration, with responsibilities to address energy policy issues and implement energy-related programs in the state.[97] The EERMC is not an agency, it is a "council" consisting of

While the Commission continues to try to understand these issues, it expects National Grid to be investing in their capabilities to manage demand to minimize the cost of serving load and maximize customer value.

[97] R.I. General Laws §42-140-3.

appointed members who are volunteers.[98] The EERMC has no employees and is supported by staff from OER and consultants hired by EERMC.

Rhode Island General Laws §39-2.1.2 includes a provision which directs the Commission to allocate funds from the energy efficiency program of National Grid to EERMC and OER in an amount "not to exceed" a specified aggregate cap. Therefore, electric and gas ratepayers pay for the activities of EERMC and OER that are funded through this allocation.[99] In previous years, the law has required the Commission to allocate an amount of ratepayer funds "not to exceed" 2% of the program funds, with the allocation split 50% to OER and 50% to EERMC. During the 2021 legislative session the law was amended to increase the 2% cap to 3% and changed the split to 60% to OER and 40% to EERMC.[100]

National Grid proposed an allocation of ratepayer dollars to OER and EERMC that was approximately $2.64 million and $1.75 million respectively, up to the full 3% aggregate cap. The Commission reviewed the filing and does not question OER's need of the higher funding allocation. The Commission observed that the budget cap for EERMC had increased by 75% from approximately $1 million in 2021 to $1.75 million for 2022.

The Commission issued discovery requests to EERMC in order to determine whether the EERMC needed the additional funds. The Commission also requested a breakdown of expenses for the years 2020 and 2021, including an estimate of remaining expenses for 2021. The

[98] R.I. General Laws §42-140.1-3.
[99] *See* R.I. General Laws §39-2-1.2(i).
[100] Regarding R.I. General Laws §39-2.1.2(i) & (j), it is clear and unambiguous that the Commission is assigned the responsibility to allocate an amount not to exceed the 3% cap in paragraph (i). However, there is an ambiguity created by the 60%/40% sharing that is specified in paragraph (j). To provide a logical interpretation that reconciles the two paragraphs in a meaningful way, and consistent with the Commission's duty in Title 39 to assure just and reasonable rates, the Commission interprets the latter to mean that OER has its own cap equal to 60% of the 3% aggregate cap and EERMC has its own cap equal to 40% of the 3% aggregate cap. The Commission then has the responsibility to determine the amount to be allocated to each, staying within the boundaries of the aggregate and individual caps. No party ultimately challenged the Commission's application of the statute in this manner.

Commission asked the EERMC to provide a budget number from which the Commission could establish a reasonable allocation for the council. In response, EERMC provided an "initial, high-level draft budget" that had been submitted to EERMC at its November 2021 council meeting.[101] The draft budget proposed compensation for EERMC's consultant services of $892,976, along with other enumerated items. This proposal was over $200,000 higher than the amount that had been budgeted for payments for consultant services for 2021. The draft budget also had an "unallocated" line item of $575,724, meaning there were no projected expenditures for that amount.

The EERMC also stated that it had not yet voted to adopt a budget for 2022, but that it expected its consultant services to be $922,976 for 2022.[102] The EERMC also expected to incur additional expenses for legal services.[103] Adding these newly identified expenses to the draft budget equated to a proposed budget of $1,224,476.[104] There were no other estimates in the record for any other projected expenses provided by EERMC to support the allocation.

In the process of this review issues arose with the method by which National Grid held and transferred funds to EERMC. First, National Grid was transferring ratepayer funds to a reserve for certain yet-to-be incurred expenses of EERMC in future years relating to a study. National Grid was also transferring to EERMC end-of-year balances of unspent ratepayer funds attributable to the original EERMC allocation. These transfers were made to a business bank

[101] *See* EERMC's Response to PUC 1-5. EERMC's Response to PUC 1-5 contained a link to the document titled "EERMC 2022 Budget - DRAFT 11.12.2021." The document is located at http://rieermc.ri.gov/wp-content/uploads/2021/11/2022-eermc-budget_draft.pdf.
[102] The only difference between the draft budget from November and the newly approved amount for consultant services was the addition of $30,000 to fund an intern for the University of Rhode Island Energy Fellows program who apparently would be hired or managed by the consultants. EERMC Response to PUC 2-1.
[103] *Id.*
[104] The November draft total was $1,177,476 (exclusive of the unallocated $575,724). Adding the $30,000 for the intern and the additional legal expenses (incrementally $17,000) referenced in PUC 2-1, the total in the record comes to $1,224,476.

account held in the name of the law firm of the legal counsel for EERMC (EERMC Bank Account).[105]

In order to determine EERMC's budget allocation for 2022, the Commission sent additional data requests to both National Grid and EERMC, one of which was a request for all the invoices paid by National Grid to or on behalf of EERMC for 2020 and 2021.[106] Other requests asked the EERMC to identify the year-end balance that existed in the EERMC Bank Account for 2021.[107] National Grid provided copies of all the billings which supported the payments and transfers made in 2020 and 2021.[108] The vast majority of EERMC's expenses were paid by National Grid after they were forwarded to the Company on behalf of EERMC by an employee of OER who was responsible for reviewing the invoices and approving them for payment.[109]

With respect to the balance in the EERMC Bank Account, EERMC initially responded that the expected year-end balance was approximately $200,000.[110] However, bank statements requested by the Commission showed the end-of-year balance in the account in the December 2021 statement was $301,408.[111]

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[105] As a result of these transfers, National Grid's end-of-year reconciliation schedules indicate that the allocations to EERMC was expensed completely. *See, e.g.*, 2017 Year-End Report at http://www.ripuc.ri.gov/eventsactions/docket/4654-NGrid-YearEndRept2017_5-1-18.pdf; 2018 Year-End Report at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/4755-NGrid-Year-End-Report-2018-%285-15-19%29.pdf; 2019 Year-End Report at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/4888-NGird-Year-End-Report-2019-%285-15-20%29.pdf; 2020 Year-End Report at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/4979-NGrid-Year-End-Report-2020-%28PUC-5-3-21%29.pdf
[106] *See* National Grid Response to PUC 5-6.
[107] *See* EERMC Response to PUC 2-2, 3-1 and PUC 3-3. It is important to note that the Commission is not suggesting that there was any abuse of spending by the law firm that was the account holder. Rather, the Commission was making an effort to sort out the balance and determine which expenses were paid through the account and how much in ratepayer funds were owed back to ratepayers.
[108] *See* National Grid Response to PUC 5-6.
[109] *See* National Grid Response to PUC 3-6.
[110] EERMC Response to PUC 2-2.
[111] *See* EERMC Response to PUC 3-3.

i. The Division's Position and Recommendation

In a post-hearing filing, the Division made recommendations to the Commission with respect to the allocation to EERMC.[112] First, the Division recommended, at a minimum, that the allocation be reduced by the unallocated dollars that were identified by EERMC, as well as the $100,000 relating the future study expenses that did not relate to the 2022 program year. In addition, the Division made two other recommendations: (i) that National Grid be required to hold all the funds and pay the expenses, and no further transfers be made to the EERMC Bank Account, and (ii) that all unused funds at the end of the annual plan year be credited back to ratepayers to cover other program costs for the following annual plan.

ii. Position of EERMC

In response to the Division's post-hearing filing, EERMC clarified that it was not contesting the legal issue relating to the Commission's discretion and authority to make the allocation.[113] Instead, EERMC argued that the Division's position was "premature" since EERMC was "still in the process of submitting record requests in this docket." The EERMC also argued that "the Division points to no evidence in the record, or other rationale to support its position that the allocation at the full 3% is not justified." The EERMC, however, did not provide evidence in the record to support its' own claim that the full 3% allocation was justified.[114]

iii. The Commission's Allocation Decision

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[112] *See* Division's Requested Approvals at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-DIV-RequestedApproval-1-18-22.pdf.
[113] *See* EERMC's Limited Scope Objection to the Division's Requested Approvals at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-EERMC-Objection-1-23-22.pdf .
[114] The OER did not take any position on the issue of the allocation to EERMC.

Given the wide scope of responsibilities of OER, the Commission did not conduct a review to determine the need for the funds for OER's share. For that reason, the Commission is allocating to OER $2,297,300, which represents its full share of 60% of the aggregate cap of 3%.[115] However, as described above, the Commission did perform a review relating to the allocation for EERMC. Based on the evidence from that review, the Commission is allocating $1,025,763 to EERMC for 2022.

The Commission undertook a review of the invoices in an effort to evaluate what the allocation for EERMC should be for 2022. The process used by the Commission was a simplified version of what occurs in rate cases for non-investor owned utilities. In order to determine what expenses are reasonable to include in future rates, it is a common practice to review recent cost incurrence history, then seek explanations from the entity seeking recovery of projected costs from ratepayers to explain any costs that are projected to be higher than recent past history. In this case, the Commission reviewed the invoices for the two-year period 2020 and 2021, provided by National Grid. The Commission also reviewed a scope of work memo dated November 18, 2021, upon which EERMC apparently relied to establish the consultant contract limit for 2022.[116]

The Commission's decision is based on an analysis of the number of hours that were billed by the EERMC's consultants in 2020 and 2021. Specifically, the Commission calculated the total hours billed by the consultant and its subcontractors for the years 2020 and 2021, which were approximately 5,059 in 2020 and an estimated 4,010 in 2021. These historical hours were compared to the consultant's forecasted hours for 2022 in the November 18, 2021 scope of work

[115] The amount for OER is lower than the original proposed allocation of $2.64 million because the final approved budgets for the 2022 energy efficiency programs were reduced from the original filing, resulting in a lower aggregate cap once the 3% limit is applied.

[116] The EERMC provided the link to the consultant's Scope of Work and Budget for 2022 in response to PUC 2-1.

memo, which was stated as 5,767. The witness for EERMC who works for the consultant was given an opportunity to explain why the number of hours projected for 2022 would be so much higher than 2020, but he could give no reason other than to refer to the scope of work memo.[117]

Using the higher of the two years – 5,059 hours – the Commission calculated a projected budget based on the historical experience of 2020. This was done by multiplying the 2020 hourly total by the implicit blended hourly rate of $157 per hour reflected in the consultant's 2022 scope of work proposal.[118] The final allocation was then calculated by adding other projected costs for 2022.[119] Then, consistent with the Division's recommendation, the Commission excluded $100,000 of future expenses from the 2022 allocation since those expenses will be incurred in a future annual plan year. This results in the budget allocation of $1,025,763.

In addition, consistent with the Division's recommendation, the $1,025,763 allocation must be netted against any surplus cash existing in the EERMC Bank Account, which represents ratepayer funds from prior years. The bank statement indicates cash of approximately $301,000 as of the end of 2021. EERMC must return the existing balance of ratepayer funds to National Grid. National Grid is directed not to pay any expenses of EERMC until the cash balance is returned.[120] However, the EERMC witnesses indicated that there were expenses not yet paid which pertain to the 2021 program year. National Grid is directed to pay the remaining expenses from 2021 after the cash balance is returned, provided that appropriate invoices are provided supporting the cost incurrence in 2021.

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[117] Hr'g Tr. at 184-187 (Jan. 11, 2022).
[118] $892,976 divided by 5,676 hours = $157 per hour; $157 multiplied by 5,059 hours = $794,263.
[119] These costs were reflected in the draft budget of November 18 provided in PUC 1-5, along with the response to PUC 2-1 which added $30,000 for an intern and recognized an increase in legal cost of $17,000 over the amount listed in the November 18 draft.
[120] If there are any documented 2021 expenses that EERMC did not pay, National Grid may pay those expenses, as long as it falls within the allocation cap for 2021, and the Company notifies the Commission of the payment.

The Commission also finds it necessary to establish a transparent and consistent accounting process for the payment of EERMC expenses for 2022. First, any balance of unspent funds should be credited back to ratepayers. Second, the allocation for a program year is intended to cover annual expenses for that year and is not to be held to pay expenses in future years.

It also is important to set forth what will be required in the next annual plan regarding the determination of future annual allocations for EERMC. This is necessary to establish a reliable accounting of ratepayer funds and assure that there are no overcharges.

Accordingly, the Commission is ordering the following process:

(1) Consistent with the Division's recommendation, all expenses incurred by EERMC for 2022 shall be paid by National Grid, upon receipt of invoice documentation that the amounts are owed. National Grid shall take all reasonable steps to expedite such payments as soon as possible, but no later than 30 days from receipt. If National Grid is not complying with this directive, EERMC should notify the Commission.

(2) National Grid is directed not to pay any expenses of EERMC until any cash surplus in unspent ratepayer funds in the client account is transferred to it.

(3) Consistent with the Division's recommendation, no future funds shall be transferred to EERMC directly; provided, however, if there are unusual circumstances that make it practical and reasonable for funds to be transferred to EERMC to facilitate payments made by EERMC directly for a given expense instead of National Grid, permission may be sought from the Commission.

(4) The Commission expects that EERMC will manage its expenses within the allocation authorized in this order. However, if EERMC forecasts its actual expenses to exceed

the amount of the allocation approved by the Commission in this order, EERMC may make a filing seeking approval in advance for an additional allocation of funds to cover excess expenses, provided that a full explanation and justification for the excess expenditures is included in the filing to the Commission, and such expenditures are found to be just and reasonable by the Commission.

(5) For plan year 2023, the Commission is aware that the cost of the next Potential Study could exceed $500,000 and, thus, could strain the budget allocation for the year in which the expenses are incurred. If there are not enough funds within the capped allocation applicable to the year in which the Potential Study costs are incurred, the EERMC may request that the incremental cost of the study be amortized over the three-year period (or the first two years) to which the Potential Study pertains, but only to the extent that there are not enough funds in the applicable year's allocation to cover the full cost.

(6) National Grid shall file copies of all invoices paid to cover EERMC's expenses on a quarterly basis by the 15th of April, July, October, and December, and a full reconciliation of the prior calendar year's payments by March 15. The December filing should also include an estimate of expenses not yet paid, but expected to be invoiced, as informed by representatives of EERMC. Copies of these reports also shall be sent directly to each of the EERMC members, individually.

(7) For future planning purposes, the EERMC is requested to prepare a budget for 2023 before National Grid makes its filing for the 2023 plan and provide the budget figure to National Grid. National Grid shall include that budget figure in its proposed plan schedule as the proposed allocation for EERMC. EERMC must provide testimony,

reasonable documentation, and justification for the budget level to support a Commission allocation of the requested amount. The budget must reflect reasonable costs, be reasonably needed to carry out its duties, and be reasonably related to the expense types identified in the statute. The Commission retains its authority to determine the final allocation based on the evidentiary record, subject to the statutory caps.

iv. Additional Observations

It is regrettable that the Commission needs to address the conduct of a witness who appeared before the Commission on the subject of the allocation of funds to the EERMC. But responsible stewardship of public funds and respect for the regulatory processes of this quasi-judicial tribunal require a response.

An employee of OER testified in these proceedings regarding the costs that were being passed onto ratepayers from consultancy charges assessed on EERMC. The employee was a Program Services Officer who had responsibility to assure that the charges reflected in invoices to EERMC were reasonable.

During the proceedings, the Commission uncovered numerous charges in the invoices sent by a consultant for EERMC which appeared unreasonable.[121] The referenced OER employee appeared before the Commission to provide an explanation. The Chairman asked the witness about invoiced charges by one of the subcontractors which indicated a consultant was

[121] In addition, the Commission notes that the EERMC and its consultant had originally established a contractual limit for consultant services in 2021 of $631,000. The contract under which EERMC's consultant was providing services placed the risk on EERMC's consultant that its all-inclusive price might underestimate the number of hours needed to fulfill the contractual obligations. However, EERMC voted to increase the contractual limit twice, resulting in the EERMC and ratepayers paying over $92,000 more than EERMC's contractor's firm contractual commitment required.

charging $150 per hour for administrative work and event planning. The Chairman further explained that careful invoice review is important, stating:

> "[I]f National Grid walked in and gave us these kind of charges, there would be a cost disallowance because I'd consider it as imprudent expenditures. So don't take it personally. You've got a lot going on, you're doing a lot of stuff, but we look at those things all the time and I see this, it's not a lot of money in the larger scheme of things, but it's reflecting a lack of attention to detail about how much the ratepayers are being charged, and I think I'm more, like, sending a message saying please pay attention to these things, and maybe it's the lack of oversight on it. I don't know. But that's my response. You're welcome to respond to it or just leave it as it is, but that's a comment that I felt really important to make in light of the situation when we were looking at the invoices."

The referenced OER employee responded that the EERMC members, as clients of the consultant who are aware of the rates for the services, "are comfortable paying those rates." This comment was made without attempting to explain how the EERMC members could have been comfortable with the rates when the witness later acknowledged that he never showed the invoices to the EERMC members. Then he remarked:

> "And so the assertion that people aren't paying attention to detail and that we're not sensitive to ratepayer costs, I would strongly disagree with, and if we want to talk about the concept of appropriateness of the use of ratepayer funds, we've spent now an entire day in this proceeding with a number of people getting a very large amount of money to sit through these hearings."

This response suggests a lack respect or a lack of understanding that the role of the Commission is to assure that ratepayer funds are being expended prudently – regardless of whether the costs are measured in millions of dollars, thousands of dollars, or hundreds of dollars. The Commission does not have a cut-off when determining the reasonableness of expenditures of ratepayer funds.

Moreover, it had become evident that the EERMC had been paying consultant fees that may be higher than the industry norm. In addition, a significant amount of ratepayer funds from past annual programs had been transferred to a private bank account of an attorney which account was entirely outside of both the state and regulatory accounting systems. Further, at the beginning of the proceedings, the allocation of funding for EERMC was proposed at $1,762,200, which was a 75% increase over the prior year 2021 budget allocation. When asked for a forecasted budget breakdown for 2022, EERMC was unable to identify any purpose for over a half million dollars of the requested funds.

The exchange reflected the attitude of a witness who did not respect the Commission's responsibility of oversight of ratepayer funds. The Commission carries out its duties seriously and expects that all parties and witnesses will respect state regulatory processes which are designed to provide oversight over public expenditures.

D. Gas Overspend

At hearing on January 13, 2022, the Commission questioned National Grid witness Angela Li, regarding the reasons for the gas overspend. Ms. Li reiterated that the cause of the gas overspend was a combination of the backlog of 2020 projects that had not been completed, strong demand for weatherization, and the increased workforce in 2021 that was now able to work on projects.[122] Ms. Li also testified that, based on the Company's preliminary data, the Company also overspent in the corresponding electric weatherization programs. The overspend in the electric programs was significantly less than in the gas program with the Company having overspent by 137% in the electric program and 196% in the gas program – but Ms. Li explained that these percentages were again based on preliminary data.[123]

Findings

The Commission allowed recovery in rates of the requested $6.097 million related to the gas overspend subject to full review by the Commission when final numbers are filed. The

[122] Hr'g Tr. at 223-24 (Jan. 13, 2022).
[123] Hr'g Tr. at 226-27 (Jan. 13, 2022).

Commission directed National Grid to submit the final numbers by April 1, 2022. The Commission deferred consideration of whether the overspending was prudent until the final numbers are filed and reviewed by the Commission.

E. **Evaluation, Measurement, and Verification Budget**

In response to Commission data requests, the Company provided a breakout of the annual budget and actual spending on EM&V studies for the period of 2011 through 2021.[124] The information clearly showed that actual spending was significantly less than the amounts budgeted each year. In fact, the average of the actual spending to the forecasted budget for the years 2011 through 2020 was approximately 72%.[125] The average spending for the last three years (from 2018-2020) amounted to $1.87 million and the highest actual spending during that period was $2.4 million.[126] The Company also explained that it develops its budget by first forecasting the projected cost of each planned study and the cost of external consultant general support, and then builds in a contingency for study needs that arise during the program year.[127]

At hearing, Ms. Erin Crafts, senior analyst for Evaluation, Measurement, and Verification, testified for National Grid that in almost every year since 2011 the actual spending on EM&V studies was less than the expected budget. Ms. Craft testified that the general reasons for this underspending were due to delays in studies where not all the funds were needed in a given year and because, in some instances, the Company determined that planned studies were not needed at all.[128] Ms. Craft also testified that typically the Company has not needed to use the contingency

[124] National Grid Response to PUC 1-108. The Company did not provide actual spending for 2021.
[125] *Id.*
[126] *Id.* In 2020 the Company budgeted $3.5mln and spent only $2.4mln. *Id.*
[127] National Grid Response to DIV 2-27.
[128] Hr'g Tr. at 122 (Jan. 13, 2022). In addition, for the last two years the Company had planned a study based on a code update, but the code update has been delayed. Id. at 122-23.

funds for study needs that arise during the program year because, if needs arose, it would use the underspent budgeted funds.[129]

Findings

The Commission found that the Company was overbudgeting. The record is clear that the Company's actual spending on EM&V studies is significantly less than the amount it annually budgets. In addition, the Company builds a contingency amount into its EM&V budget but does not typically need to use it. Accordingly, the Commission reduces the revenue requirement for the EM&V budget by $725,000 to $2.4 million. This $2.4 million, although less than the Company requested, is more than the average of the last three year's actual spending and is equal to the 2020 actual spending, which is the highest actual spending in the same three-year period.

F. **Misconduct or Potential Fraud in the Upstream Lighting Program**

During the course of the proceedings, National Grid informed the Commission that it had discovered noncompliance with certain program rules by one program participant serving as a manufacturer/distributor of energy efficient lighting products. The Commission requested further information on the noncompliance or fraud and any investigations that the Company had conducted. National Grid informed the Commission that it, along with other utilities in Massachusetts, had conducted an investigation into the allegations of noncompliance and determined that they were accurate.[130] However, the investigation concluded that the noncompliance with program rules, although material, did not amount to fraud.[131] The Company described certain remedial measures it took, including removing the manufacturer from the program, and additional program controls that were implemented in response to the discovery.[132]

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[129] *Id.* at 124-25.
[130] National Grid Response to PUC 5-4.
[131] *Id.*
[132] *Id.*

During this investigation, the manufacturer/distributor raised an allegation that, in late 2017, it was asked by National Grid to hold off on submitting invoices in Rhode Island for the last three months of 2017 until early 2018. The manufacturer also claimed that, in 2018, National Grid again asked the vendor to hold off submitting invoices in Rhode Island until early 2019. National Grid conducted an internal investigation and confirmed that certain employees in the Company's residential upstream lighting program had engaged in a practice of manipulating invoices by requesting the manufacturer to delay submitting invoices to the Company for payment.[133] The Company took disciplinary action against certain employees involved and conducted a further investigation of the residential upstream lighting program for the years 2016 through 2021 to quantify the impact on Rhode Island ratepayers. As part of this investigation, the Company took all of the out-of-period invoices that it found had been accounted for in the wrong calendar year and placed associated spend and claimed savings back into the appropriate calendar year. The Company then recalculated total non-income eligible residential sector spend and savings, and resulting shareholder incentive, for each program year that was impacted to see if there was any impact on Rhode Island customers. These adjustments lead to a downward adjustment in earned performance incentive because the Company was already above or sufficiently close to the maximum potential performance incentive earnings in specific areas in two of the years investigated. National Grid was able to quantify the impact on Rhode Island customers stemming from the corrected annual shareholder incentive amounts and calculated an aggregate, net downward adjustment of the shareholder incentive (meaning money returned to the energy efficiency program) of $124,135. The Company informed the Commission that it intended to credit

[133] *Id.*

this money to the energy efficiency fund prior to February 1, 2022 so that this credit will be reflected in advance of a potential new energy efficiency surcharge for 2022.[134]

At hearing, the Commission attempted to question National Grid witnesses about the scope of the investigation and any other impacts on ratepayers. In particular, the Commission was concerned with whether the Company had investigated programs other than the residential upstream lighting program for similar conduct. However, National Grid's counsel informed the Commission that none of the witnesses knew the extent or scope of the investigation.[135] The Commission then requested copies of any reports that resulted from the investigations discussed in the Company's response to PUC 5-4, and the Company provided redacted copies of two reports.[136]

Findings

The Commission withheld further ruling on this matter at this time and will leave the matter open pending further investigation and proceedings. However, the Company will credit the $124,135 from shareholder funds to the fund balance at this time.[137]

The Company later informed the Commission that it continues to investigate the activities of energy efficiency program managers to determine whether out-of-period invoicing or other

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[134] *Id.*
[135] Hr'g Tr. at 235-36 (Jan. 13, 2022).
[136] *See* National grid Response to RR-5. The Company identified three documents that were responsive to Record Request No. 5: (1) a Matson Driscoll Damico LLP Forensic Accounting Report (the "MDD Report") prepared at the direction of outside counsel representing Massachusetts utilities National Grid, Eversource, Cape Light Compact, and Unitil concerning the lighting manufacturer/distributors alleged misconduct; (2) an internal report prepared by National Grid's internal counsel concerning Company conduct relating to untimely lighting invoices (the "Internal Counsel Report"); and (3) a draft Forensic Accounting Summary (the "Forensic Summary") prepared at the direction of National Grid's internal counsel also pertaining to the lighting invoices. The Company filed an *Objection to Record Request 5* and a *Motion for Protective Treatment of Confidential Information*. The Company withheld the MDD Report in its entirety and produced redacted confidential versions of the Internal Counsel Report and the Forensic Summary. *Id.* At open meeting on January 25, 2022, the Commission Chairman granted temporary protective treatment over the reports and documents that were produced by the Company.
[137] The Company plans to make this credit prior to February 1, 2022. *See* National Grid Response to PUC 5-4.

similar activity occurred in any energy efficiency program during the period 2012-2021.[138] National Grid is targeting June 1, 2022, to complete the expanded investigation and will provide the Commission with a copy of any final reports.[139] In response to Commission concerns that the potential sale of The Narragansett Electric Company could hinder any potential Commission investigation or review of this matter after the Company completes its investigation, the Company provided the Commission with a copy of an executed Cooperation Agreement among PPL Corporation, PPL Energy Holdings, LLC, PPL Rhode Island, National Grid USA, Service Company, and The Narragansett Electric Company that provided, *inter alia*, that the companies would cooperate on providing the Commission with the ability to gather information from all personnel with relevant knowledge in connection with the Commission's investigation of this matter.[140]

On June 7, 2022, The Narragansett Electric Company submitted its internal report on the *Review of Invoices Within the Energy Efficiency Program*.[141] The Commission has opened a new docket (Docket No. 22-05-EE) in which the Commission will investigate the Company's actions and the resulting impact on ratepayers.[142]

G. **Rhode Island Infrastructure Bank/Efficient Buildings Fund**

While the recent statutory revisions mandate the transfer of $5 million to the Rhode Island Infrastructure Bank (RIIB), the Commission had concerns about the Company's proposed allocation. National Grid, in response to data requests from OER asking for the rationale for

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138 National Grid Response to Post-Decisional 1-1 and 2-1.
139 *Id.*
140 *See* National Grid Supplemental Response to Post-Decisional 1-2.
141 Available. https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-06/5189-RIE-Responses%20to%20PUC%20Post-Decision%20Set%203%20%28R%29%28PUC%206-16-22%29%20w-bates.pdf
142 All filings in Docket No. 22-05-EE - In re: Investigation of Misconduct by The Narragansett Electric Company Relating to Past Payments of Energy Efficiency Program Shareholder Incentives are available at the PUC offices, located at 89 Jefferson Boulevard, Warwick R.I. or at https://ripuc.ri.gov/Docket-22-05-EE.

allocating the entire $5 million to the electric budget, stated that the majority of the RIIB allocations in previous years was used for electric energy savings, with significant investments going to municipal street lighting projects. Thus, the Company explained that it has allocated the entire funding transfer to the electric budget since 2019 and just continued that allocation in the proposed plan.[143] In addition, the Company saw no justification to update this method of allocation between the electric and gas budgets because the Company had not been provided with any information from RIIB as to how the transfer would be utilized.[144] Moreover, the Company acknowledged that the projects to which RIIB would provide funding are unknown and may not be energy efficiency projects and, thus, the Company is unable to plan for any energy saving or associated benefits to ratepayers related to the transfer.[145]

At hearing, Benjamin Rivers, a senior analyst for National Grid, testified that he contacted RIIB to request information about how RIIB intended to use the funds, but was informed that the information was not available.[146]

Findings

The legislature recently amended R.I.G.L. 39-2-1.2 mandating the transfer of $5 million to RIIB on an annual basis.[147]

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[143] National Grid Response to OER 1-5.
[144] *Id.*
[145] National Grid Response to OER 1-6.
[146] Hr'g Tr. at 193-94. (Dec. 6, 2021).
[147] The relevant language of R.I.G.L. 39-2-1.2(n) states:

> Effective January 1, 2022, the commission shall allocate, from demand-side management gas and electric funds authorized pursuant to this section, five million dollars ($5,000,000) of such funds on an annual basis to the Rhode Island infrastructure bank. Gas and electric demand-side funds transferred to the Rhode Island infrastructure bank pursuant to this section shall be eligible to be used in any energy efficiency, renewable energy, or demand-side management project financing program administered by the Rhode Island infrastructure bank notwithstanding any other restrictions on the use of such collections set forth in this chapter.

It is clear that National Grid has no insight into how RIIB intends to spend the funds and, consequently, the Commission cannot accurately allocate the expense between the electric and gas budgets on the same proportion as RIIB intends to utilize the funds.[148] However, it is equally clear that there is no reason that the transfer is allocated only to the electric budget as the Company proposed.

Thus, for this year, the transfer should be allocated on a proportional basis similar to the way that the regulatory expenses of OER and EERMC are allocated.

H. **Forward Capacity Market**

In order to avoid the FCM issue taking time away from the review of other issues in this docket the Commission separated the FCM issue from this docket and it will proceed in a separate docket.[149] This issue will now proceed under Docket No. 5208.

IV. **Conclusion**

At Open Meeting on January 28, 2022, the Commission considered the Company's second revised compliance filing filed on January 27, 2022.[150] The Commission approved the programs and portfolios and 2022 Annual Plan as modified by the Commission's decisions and approved the final budget, annual savings goals, and rate factors as shown in National Grid's compliance filing. The Commission approved the rate factors shown in Table G-1 and Table E-1 of the seconded revised Compliance filing filed with the Commission on January 26, 2022. As a result of the Commission approvals and modifications, the proposed EEP charge for electric customers was reduced from the proposed $0.01425 per kWh to $0.01213 per kWh. The proposed EEP

[148] As detailed *supra*, the statute provides discretion for RIIB to utilize the funds for "any energy efficiency, renewable energy, or demand-side management project" that it administers.
[149] Hr'g. Tr. at 5-6 (Dec. 8, 2021).
[150] National Grid's Second Revised Compliance Filing . https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5189-NGrid-Compliance-2nd-Revised-Updated-Tables-%28PUC-1-27-22%29.pdf

charge for residential gas customers increased from the proposed $1.221 per Dth to $1.271 per Dth. The proposed EEP charge for commercial and industrial gas customers increased from the proposed $0.836 per Dth to $0.846 per Dth.

As a result of the decisions made, the Commission approved a budget of $108.6 million for the electric program and a budget of $36.9 million for the gas program. The Commission emphasizes that it still expects the Company to continue to use the 5% year-over-year budget increase for both the electric and gas programs for planning the 2023 annual plan. Although the Commission approved a plan with an electric budget less than the budget that National Grid originally filed, the rationale for approving the 5% increase last year remains the same. Moreover, an annual increase of 5% per year would continue a significant upward trajectory of spending. The Commission remains mindful of the bill impacts on all ratepayers going forward who are being asked to fund a myriad of important public policy objectives in addition to energy efficiency that will continue to place cumulative upward pressure on rates.

The Commission reiterates that this 5% budget increase is illustrative and non-binding and is used for planning purposes, and, thus, the Commission is not pre-approving any actual budgets and may reject proposed budget increases in next year's filing. Additionally, the Parties could propose budgets higher than the 5% incremental increase. However, in the event that National Grid proposed a spending budget, or savings targets, that deviated from the spending boundaries, National Grid must present evidence that facts or other information presented at the time when the PUC set the target have since changed justifying those deviations.

While not determinative of any decisions in this docket, the Commission would like to address several important issues that were examined.

The Commission is concerned about the weight that stakeholders may be giving to economic development benefits. While the Commission considers economic benefits in its analysis and evaluation of proposals, it is concerned that these benefits are not as certain as some stakeholders may believe. The Commission notes that, as it does with all evidence, it determines the weight that it will give to evidence of economic benefits. This year, the Commission questioned the weight to be given these economic benefits as it appeared that some of the methods for determining economic benefits appear counterintuitive. For example, evidence presented this year showed that certain incremental spending for information technology would formulaically calculate a different economic benefit impact depending solely on whether it is characterized as residential or C&I spending. This non-sensical result reveals how unreliable the formulaic calculation of economic benefits can be if the dollar figures being yielded by the models are treated too literally as benefits that are reasonably certain to be achieved.

In addition, the Commission is concerned with how the economic development impacts are presented in the annual plan. In particular, the inclusion of large economic benefits in the benefit-cost analysis may skew stakeholders or other interested parties' perception of the value of certain program investments. Going forward, as the Company and the Division agreed, the benefit cost ratios that Company presents should not include the economic benefits but should present those benefits separately.[151]

Accordingly, it is hereby

(24440) ORDERED:

[151] The Division also recommended that National Grid present the full amount of macroeconomic benefits for the energy efficiency portfolio as a whole, not the "net incremental" amount as estimated by the Company, and to report other metrics for macroeconomic impacts, including jobs, GDP, state income taxes, business income, and personal income.

1. National Grid is authorized to implement the programs described in the 2022 Energy Efficiency and Conservation Procurement Plan as modified by this Order.
2. The following budgets are approved for the 2022 Energy Efficiency and Conservation Procurement Plan for 2022. The Commission approved the electric budget as presented by National Grid in its Response to PUC 7-9, otherwise known as the Alternative Base Case, as modified by this Order. The Commission approved the gas budget as presented in National Grid's original filing as modified by this Order.
3. The Commission makes the following orders regarding the EERMC allocation:
    a. The allocation to EERMC is set at $1,025,763, allocated between electric and gas proportional to the total budget for each;
    b. All expenses incurred by EERMC for 2022 shall be paid by National Grid, upon receipt of invoice documentation that the amounts are owed as approved by the Executive Director. National Grid shall take all reasonable steps to expedite such payments as soon as possible, but no later than 30 days from receipt; and
    c. The Commission directs EERMC to return any funds in the client account to National Grid and for National Grid to pay any remaining bills. Any excess after paying the outstanding bills should be credited to ratepayers through the reconciliation process;
    d. National Grid shall not transfer any future funds directly to EERMC;
    e. That EERMC manage its expenses within the allocation authorized in this Order. However, if EERMC forecasts its actual expenses to exceed the amount of the allocation approved by the Commission in this Order, EERMC may make a filing seeking approval in advance for an additional allocation of funds to

cover excess expenses, provided that a full explanation and justification for the excess expenditures is included in the filing to the Commission, and such expenditures are found to be just and reasonable by the Commission;

f. National Grid shall file copies of all invoices paid to cover EERMC's expenses on a quarterly basis by the 15th of April, July, October, and December, and a full reconciliation of the prior calendar year's payments by March 15. The December filing should also include an estimate of expenses not yet paid, but expected to be invoiced, as informed by representatives of EERMC. Copies of these reports also shall be sent directly to each of the EERMC members, individually; and

g. National Grid shall file copies of all invoices paid to cover EERMC's expenses on a quarterly basis by the 15th of April, July, October, and December, and a full reconciliation of the prior calendar year's payments by March 15. The December filing should also include an estimate of expenses not yet paid, but expected to be invoiced, as informed by representatives of EERMC. Copies of these reports also shall be sent directly to each of the EERMC members, individually.

4. The allocation to the Office of Energy Resources (OER) is an amount equal to 60% of the three percent of funds authorized to be collected from ratepayers through the system benefit charge.

5. The Commission shall continue to use the Performance Incentive Mechanism attached as Appendix A to Order No. 24225 with the following modifications. First, the design performance payout is set at $3,390,165 for the electric Commercial and Industrial

sector and $1 million for the gas Commercial and Industrial sector. Second, the service quality adjustment for the electric and gas residential income eligible sectors shall be reduced by 38% and the service quality adjustment for the electric and gas residential non-income eligible sectors shall be reduced by 25%.

6. National Grid is allowed to recover in rates the requested $6.097 million related to the gas overspend subject to full review by the Commission when final numbers are filed. National Grid shall submit the final numbers by April 1, 2022. The Commission will consider whether the overspending was prudent after the final numbers are filed and reviewed by the Commission.
7. National Grid shall reduce the funding for the Evaluations, Measurement, and Verification budget to $2.4 million.
8. National Grid shall reallocate the $5 million statutory transfer to the Rhode Island Infrastructure Bank to both the electric and gas budgets on a proportional basis based on the program budgets.
9. The Narragansett Electric Company d/b/a National Grid's electric Energy Efficiency Program charge of $0.01213 per kWh is hereby approved for effect on and after February 1, 2022.
10. The Narragansett Electric Company d/b/a National Grid's gas Energy Efficiency Program charges of $1.271 per Dth for residential customers and $0.846 per Dth for Commercial and Industrial customers are hereby approved for effect on and after February 1, 2022.

EFFECTIVE AT WARWICK, RHODE ISLAND ON FEBRUARY 1, 2022 PURSUANT TO OPEN MEETING DECISIONS ON JANUARY 25 AND 28, 2022. WRITTEN ORDER ISSUED JULY 11, 2022.

PUBLIC UTILITIES COMMISSION

Ronald T. Gerwatowski, Chairman

Abigail Anthony, Commissioner

John C. Revens, Jr., Commissioner

NOTICE OF RIGHT OF APPEAL: Pursuant to R.I. Gen. Laws §39-5-1, any person aggrieved by a decision or order of the PUC may, within seven (7) days from the date of the order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.